S.B. CIVIL WRIT PETITION NO.4478/2007
(Anop Chand Vs. Nand Kishore & ors.)

Date of Order :: 30th July 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr.K.C.Samdariya, for the petitioner.

Reportable

The writ petitioner is defending a petition filed by his landlords before the Rent Tribunal, Nagaur (Case No.12/2006) for recovery of arrears of rent, for revision of rent, and for eviction on the grounds, inter alia, of default in payment of rent, reasonable and bona fide requirement of the landlord, and the tenant acquiring suitable accommodation. After filing of the reply by the present petitioner, the respondents-landlords filed their rejoinder and along with the rejoinder put in certain documents Exhibit 16 to 18 and so also affidavits of the applicant Kamal Kishore and one witness Naresh. The petitioner raised objection that such additional affidavits and documents were filed with the rejoinder without there being any permission or direction from the Tribunal in that regard; and that Section 15(4) of the Rajasthan Rent Control Act, 2001 ('the Act') provides only for filing of rejoinder but there is no provision that permits filing of affidavits and documents with rejoinder.

The objection so raised by the petitioner has been rejected by the Tribunal by the impugned order dated

20.07.2007(Annex.7) with the following observations:-

> "बेशक किराया कानून में जबावुल जबाब के साथ शपथ पत्र दस्तावेज पेश करने का निर्देश पक्षकार को नहीं दिया है इसका अर्थ यह नहीं लगाया जा सकता कि प्रत्यार्थी द्वारा प्रस्तुत जबाब एवं उठाये गये नये तथ्यों का प्रस्तुत जबावुल जबाब में अंकित तथ्यों के अभिवचन लिए साक्ष्य की आवश्यकता न हो। इसके विपरीत अधिकरण यह मानती है कि किसी पक्षकार द्वारा जबाबुल जबाब में अंकित किए गये तथ्यों को भी शपथ पत्र या फिर दस्तावेज साक्ष्य समर्थित एवं प्रमाणित करे उसके अभाव में किसी प्रकार का प्रस्तुत जबाबुल जबाब का कोई साक्षीय मुल्य नहीं रह जाता है। अब यदि अधिनियम में जबावुल जबाब के साथ पेश करनेका निर्देश कानून अंकित नहीं किया है इसकी सीधी सादी व्याख्या यही हो सकती है कि अर्जी दावा व जबाब के साथ शपथ पत्र या कोई दस्तावेज या कम से कम शपथ पत्र पेश करना अनिवार्य है । लेकिन जबाबुल जबाब बाबत कोई पक्षकार मात्र नकारात्मक तथ्य अंकित करे या अन्यथा रूप से भी कोई साक्ष्य पेश करना न चाहे तो उसके लिए शपथ पत्र / दस्तावेज पेश करना कानून बाध्यकारी नहीं होता। लेकिन यदि कोई पक्ष अपने द्वारा प्रस्तुत जबाबुल जबाब के तथ्यों को साक्षिक रूप में प्रमाण के साथ न्यायालय को सन्तुष्ट करने में सहयोग करता है तो उस पर कानूनन कोई आपति विपक्षी नहीं कर सकता । लिहाजा आवेदन प्रत्यार्थी आपति स्वीकार किए जाने योग्य नहीं है । अतः अस्वीकार की जाती है।"

The petitioner seeks to assail the aforesaid order dated 20.07.2007 by way of this writ petition. Learned counsel Mr. K.C. Samdariya appearing for the petitioner has strenuously

contended with reference to sub-section (1) of Section 15 of the Act that the affidavits and documents are required to be filed by the landlord along with the petition for eviction and sub-section (4) of Section 15 though permits filing of rejoinder, but filing of any affidavit or document therewith is not envisaged; and the Tribunal has been in error in permitting filing of the additional evidence along with the rejoinder. Learned counsel further submitted that the documents in question were already in existence and were obviously in the knowledge of the landlords even at the time of filing of the eviction petition and there was no reason for not filing of the same along with the original petition. Learned counsel emphasized on literal rule of interpretation; and while relying on the decision of the Hon'ble Supreme Court in Raghunath Rai Bareja & Anr. Vs. Punjab National Bank and Ors.: 2006 AIR SCW 6446 submitted that the provision contained in the statute cannot be interpreted by importing any word or phrase thereto and any other aspect of interpretation could be resorted to only when plain words of the statute are ambiguous or if read literally would nullify the object. According to the learned counsel, the words of Section 15, particularly those of its sub-section (4), are clear and unambiguous that no affidavit or document is permitted to be filed with the rejoinder and the course sought to be adopted by

the landlord in the present case cannot be permitted by importing the words in the statute as if filing of affidavit and document with the rejoinder has also been permitted.

The submissions are fundamentally misplaced and this writ petition remains bereft of substance. It is true that first and foremost principle of interpretation of statutory provision is the literal rule; but the rule of literal interpretation is itself not a rule of literal application. The rule of literal interpretation is neither intended to be that of a mathematical theorem nor of any principle to be operated and applied in abstract. The rule of literal interpretation is that in construing a written instrument, grammatical and ordinary sense of the words is adhered to unless that would lead to some absurdity, or some repugnancy or inconsistency. The words of a statute are, obviously, required to be given their natural and ordinary meaning and understood in that sense; and the sentences are construed according to their grammatical meaning but not when giving of such literal meaning leads to some absurdity or if there is something in the context or in the object of the statute to suggest to the contrary. In the very decision relied upon by learned counsel for the petitioner, the Hon'ble Supreme court, while referring to several of the fundamental decisions on the point has pointed out the principle thus:

> "40. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very object of the statute...."

The Hon'ble Supreme Court has further pointed out,-

> "46. The rules of interpretation other than the literal rule would come into play only if there is any doubt with regard to the express language used or if the plain meaning would lead to an absurdity. Where the words are unequivocal, there is no scope for importing any rule of interpretation vide *Pandian Chemicals Ltd. Vs. C.I.T., 2003 (5) SCC 590."*
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> 47. It is only where the provisions of a statute are ambiguous that the Court can depart from a literal or strict construction vide *Nasiruddin Vs. Sita Ram Agarwal, AIR 2003 SC 1543.* Where the words of a statute are plain and unambiguous effect must be given to them vide *Bhaiji Vs. Sub-Divisional Officer, Thandla, 2003 (1)SCC 692."*

Thus, it is not in doubt that when the plain words of the statute are ambiguous, or lead to no intelligible result, or if read literally would nullify the very object of the statute, or if plain meaning would lead to an absurdity, the course of literal interpretation cannot be adopted. Though literal interpretation rule is one of the fundamental principles of interpretation, however, equally fundamental are the rules that a statutory provision cannot be read *de hors* its context or in isolation; cannot be given a meaning that would lead to

absurdity; and that a statute is required to be read as a whole. It shall be presently seen that the interpretation as suggested on behalf of the petitioner is neither correct in context, nor takes into account other provisions of the statute; and given the meaning as suggested, it could lead to nothing but absurdity.

Section 15 of the Act provides for the procedure for eviction of tenant. Under sub-section (1) of Section 15, the landlord or person claiming possession is required to file a petition before the Rent Tribunal accompanied by affidavits and documents, if any, upon which the applicant seeks to rely. Sub-section (2) relates to the procedure for issuance of notice to the tenant requiring him to submit reply accompanied by affidavits and documents, if any, upon which he relies. Sub-section (3) permits the tenant to submit his reply, affidavits and documents after serving copies thereof to the applicant within 45 days of service of notice. In such chronology is the provision concerning rejoinder as contained in sub-section (4) of Section 15. It merely provides that the petitioner may file rejoinder, if any, after serving copy to the opposite party within a period of 30 days from the date of service of reply. Section 15 reads thus:

> "**Section 15. Procedure for eviction of tenant.-** **(1)** The landlord or any person claiming possession shall file a petition before the Rent

Tribunal and such petition shall be accompanied by affidavits and documents, if any, upon which landlord or person claiming possession wants to rely.

(2) The Rent Tribunal, upon filing of petition under Sub-section (1), shall issue notice accompanied by copies of petition, affidavits and documents, if any, fixing a date not later than thirty days from the date of issue of notice requiring the tenant to submit reply accompanied by affidavits and documents, if any, on which the tenant relies. The service of notice shall be effected through process server of the Tribunal or Civil Court as well as by registered post, acknowledgment due. Notice duly served by any of these methods shall be treated as sufficient service.

(3) The tenant may submit his reply, affidavits and documents after serving the copies of the same to the petitioner, within a period not exceeding forty five days from the date of service of notice.

(4) The petitioner may thereafter file rejoinder if any, after serving copy to the opposite party, within a period of thirty days from the date of service of reply.

(5) The Rent Tribunal shall thereafter fix a date of hearing which shall not be later than one hundred and eighty days from the date of service of notice on the tenant. The petition shall be disposed of within a period of two hundred and forty days from the date of service of notice on the tenant.

(6) The Rent Tribunal during the course of such hearing may hold such summary inquiry as it deems necessary and decide the petition. The Rent Tribunal may also make efforts for conciliation or settlement of dispute between the Parties.

(7) Where the Rent Tribunal decides the petition in favour of the landlord, it shall issue a

> certificate of recovery of possession from the tenant.
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> (8) The certificate issued under sub-section (7) shall not be executable for a period of three months from the date for decision:
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> Provided that in case of premises let out for commercial use such certificate shall not be executable for a period of six months from the date of decision."

It is of course true that sub-section (4) does not say that the petitioner may file rejoinder accompanied by affidavits and documents and merely permits filing of rejoinder within 30 days of the date of service of reply; however, an occasion to file rejoinder would arise essentially when some averment or plea taken in the reply by the tenant calls for its replication from the applicant-landlord. If the suggestion that for want of omission of specific permission under sub-section (4) of Section 15 no affidavit or document could be filed with the rejoinder is accepted, it would lead to an absurd proposition that although the applicant may take pleadings in replication of any reply averments, yet cannot support and substantiate such plea taken in replication by way of oral or documentary evidence. Such result is neither envisaged by the statute nor could be countenanced.

Noteworthy it is that there is no prohibition contained in sub-section (4) of Section 15 that no document or affidavit could be filed alongwith rejoinder. Even if the rule of literal

interpretation is applied, as repeatedly stressed by the learned counsel, the submission that no evidence in the form of affidavit or document could be filed with the rejoinder, is itself in the nature of reading a prohibition in sub-section (4) of Section 15 though there is no such prohibition contained. This Court is clearly of opinion that no prohibition in filing documents and affidavits with rejoinder could be read in sub-section (4) when there is none.

So far permissibility of filing of documents and affidavits with rejoinder is concerned, the provision being an integral part of the scheme of completion of pleadings and evidence before the Tribunal fixes a date of hearing per sub-section (5) and holds summary enquiry per sub-section (6), it inheres in such provision of sub-section (4) that if any pleading is taken by way of rejoinder, the same could be supported with necessary affidavit and necessary documents. It is merely that the legislature has not spelt out the obvious that the plea in rejoinder could be supported and substantiated by affidavits and documents.

Moreover, Section 21 of the Act is an integral part of the entire scheme of the procedure to be adopted by the Tribunal and the same, in unmistakably wide terms gives broad powers to the Rent Tribunal and the Appellate Rent Tribunal to call any witness for examination or cross-

examination as may appear necessary in the interest of justice. Sub-section (3) of Section 21 further provides that Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice and shall have powers to regulate their own procedure . Sub-sections (1) & (2) and relevant part of sub-section (3) of Section 21 read thus:

> **"Section 21. Procedure and powers of the Rent Tribunal and the Appellate Rent Tribunal** – (1) In every case before the Rent Tribunal and the Appellate Rent Tribunal the evidence of a witness shall be given by affidavit. However, the Rent Tribunal or the Appellate Rent Tribunal, where it appears to it that it is necessary in the interest of justice to call a witness for examination or cross-examination and such witness can be produced, may order attendance for examination or cross-examination of such a witness.
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> (2) The documents filed before the Rent Tribunal by the petitioner shall be distinctly marked by him as Exh.-1, Exh-2 and so on in the red ink and the documents filed by the respondent shall be similarly distinctly marked by him as Exh-A1, Exh-A2 and so on in red ink and in the affidavits the documents shall be referred by these exhibit marks and signatures or other parts of the documents referred to in the affidavits shall be distinctly marked by the party filing the document as A to B or C to D and so on in red ink.
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> (3) the Rent Tribunal and the Appellate Rent Tribunal shall not be bound by the procedure laid down by the Code of Civil

> Procedure, 1908 (Central Act No.5 of 1908), but shall be guided by the principle of natural justice and subject to other provisions of this Act or the Rules made thereunder and shall have powers to regulate their own procedure, and for the purpose of discharging their functions under this Act they shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Central Act No.5 of 1908) while trying a suit or an appeal ....."

Apart from the fact that sub-section (4) of Section 15 contains no prohibition in filing of affidavits and documents with rejoinder, when the Tribunal is to be guided by the principles of natural justice and has wide powers to regulate its procedure and to call any witness per section 21, it cannot be said that the Tribunal cannot permit filing of additional affidavit or document after filing of the petition or the reply, as the case may be.

Thus, if the interpretation as suggested on behalf of the petitioner is accepted, firstly it would only be leading to an absurd result; and secondly, such interpretation could be made only if sub-section (4) of Section 15 is read in isolation and in disjunction of other provisions of Section 15 and only when Section 21 of the Act is kept at bay. This Court is clearly of opinion that a procedural provision of the statute cannot be read or interpreted in the manner suggested on behalf of the petitioner.

So far the other part of suggestion about the documents being in existence earlier and in the knowledge of the applicants is concerned, apart from the fact that such objection was not stated in the application Annexure-6, it is not the case of the petitioner that the disputed affidavits and documents are not related to the plea taken in rejoinder or are irrelevant in the context of such plea.

The Tribunal has rightly taken into comprehension the requirements of law and has rightly overruled the objection raised by the present petitioner. The Tribunal has rightly observed that if the applicant while filing rejoinder does not want to produce any evidence, he cannot be forced to do so; but if he wants to satisfy the court by supporting the plea taken in rejoinder with evidence, the same cannot be objected to by the non-applicant.

The impugned order made by the Tribunal in valid and proper exercise of powers under the statute cannot be said to be suffering from error of jurisdiction nor suffers from any other error so as to call for interference.

The writ petition fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI),J.

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